Hovsepian v. Apple, Inc.

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Exhibit J

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: ACACIA MEDIA TECHNOLOGIES CORPORATION.	) C-05-01114-JW
	) AUGUST 17, 2007
	) PAGES 1-226

COPY

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: HENNIGAN, BENNETT & DORMAN
BY: RODERICK G. DORMAN
ALAN P. BLOCK
865 SOUTH FIGUEROA STREET
SUITE 2900
LOS ANGELES, CALIFORNIA 90017

FOR THE DEFENDANTS: KEKER & VAN NEST
BY: DARALYN J. DURIE
710 SANSOME STREET
SAN FRANCISCO, CALIFORNIA
94111

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

INFORMATION HAVING AN IDENTIFICATION CODE.

NOW, WE KNOW THE IDENTIFICATION ENCODER IS WHAT ASSIGNS THE IDENTIFICATION CODE AND IT'S ALSO THE IDENTIFICATION ENCODER THAT, THAT RETRIEVES THE INFORMATION FROM THE ITEMS AND THE COURT HAS ALREADY CONSTRUED THIS CLAIM TERM AS SUCH.

SO BOTH OF THOSE ELEMENTS CALL FOR THE IDENTIFICATION ENCODER OF THE COURT'S CONSTRUCTION.

YOU HAVE THE COMPRESSED DATA FORM WHICH, OF COURSE, IS DONE BY THE COMPRESSION MEANS OF THE COURT'S CONSTRUCTION. AND YOU HAVE BEING PLACED INTO ORDERED DATA BLOCKS WHICH IS DONE BY THE ORDERING MEANS OF THE COURT'S CONSTRUCTION.

AND YOU ALSO HAVE ALL OF THIS IS STORED, WHAT YOU'RE DOING IS YOU'RE STORING THE COMPRESSED DATA INFORMATION AND, OF COURSE, WHERE YOU STORE THE COMPRESSED INFORMATION IS IN THE, IN THE COMPRESSED DATA STORING MEANS OF THE COURT'S CONSTRUCTION.

SO ALL OF THESE ELEMENTS ARE ALSO IN CLAIM 19 JUST AS OUR SLIDES DEMONSTRATE FOR CLAIM 41.

THANK YOU.

MR. BLOCK: GOOD AFTERNOON, YOUR HONOR.

ALAN BLACK FOR ACACIA. THE NEXT TERM IS SEQUENCE OF ADDRESSABLE DATA BLOCKS. THE THIRD MARKMAN ORDER THE COURT CONSTRUED THE PHRASE "PLACING THE FORMATTED DATA INTO A SEQUENCE OF ADDRESSABLE DATA BLOCKS" OF CLAIM 41 OF THE '992 PATENT TO MEAN PLACING THE FORMATTED INFORMATION INTO A SEQUENCE OF DATA BLOCKS SUCH THAT THE ORDERING OF DATA BLOCKS PERMITS THE RETRIEVAL OF PORTIONS OF INFORMATION FROM ITEMS. ADDRESSABLE DOES NOT REFER TO PHYSICAL STORAGE LOCATIONS BUT RATHER TO POSITIONS RELATIVE TO THE BEGINNING OF A FILE CONTAINING INFORMATION. NOW, THIS CONSTRUCTION BY THE COURT IS CORRECT AS FAR AS IT GOES, HOWEVER, IT'S MISSING ONE ITEM WHICH IS HOW WOULD ONE DETERMINE WHAT THE ORDER OF THE DATA BLOCKS ARE OR WHAT THE POSITIONS OF THOSE DATA BLOCKS ARE RELATIVE TO THE BEGINNING OF THE FILE?

AND THE ANSWER TO THAT IS TIME ENCODING WHICH IS CONTAINED IN THE SPECIFICATION AND DESCRIBED AS THE ADDRESSING SCHEME FOR DATA BLOCKS AND WHICH PROVIDES NUMERABLE NUMBERS OF FUNCTIONALITY, ADDRESSABLE FUNCTIONALITY.

SO WHAT ACACIA IS ASKING THE COURT TO DO IN RECONSIDERATION IS TO MAKE A SLIGHT MODIFICATION TO ITS CONSTRUCTION WHICH WOULD INCLUDE TIME

ENCODING AND MAKE CLEAR HOW THOSE DATA BLOCKS ARE ORDERED AND HOW THE BEGINNING OF, OF THEIR LOCATION TO THE BEGINNING OF THE FILE IS DETERMINED.

AND WHAT WE'RE PROPOSING IS ADDING A PHRASE TO THE END OF THE COURT'S CONSTRUCTION AS FOLLOWS: "WHEREIN THE ORDERING OF THE DATA BLOCKS AND THE POSITIONS RELATIVE TO THE BEGINNING OF THE FILE ARE DEFINED BY RELATIVE TIME MARKERS ASSIGNED TO THE DATA BLOCKS."

AND I HAVE ALREADY SAID WHY WE NEED TO DO THAT. AND THAT'S BECAUSE THE SPECIFICATION MAKES IT CLEAR THAT THE DATA BLOCKS, POSITIONS OF THE DATA BLOCKS ARE DETERMINED BY THE TIME MARKERS AND TIME ENCODING IS THE ONLY ADDRESSING SCHEME FOR ADDRESSING DATA BLOCKS IN THE SPECIFICATION AND, IN FACT, THE SPECIFICATION TELLS THE READER THAT TIME ENCODING IS REQUIRED TO ACHIEVE CERTAIN ADDRESSABILITY FUNCTIONALITY.

NOW, PAGE 50. IN DESCRIBING THE PHRASE "SEQUENCE OF ADDRESSABLE DATA BLOCKS" IN THE SPECIFICATION THE PATENTEES EQUATED ADDRESSABILITY WITH TIME ENCODING.

THEY SAID AT COLUMN 7, LINE 59, THAT THE TRANSMISSION SYSTEM 100 OF THE PRESENT INVENTION ALSO PREFERABLY INCLUDES ORDERING MEANS FOR PLACING

THE FORMATTED INFORMATION INTO A SEQUENCE OF ADDRESSABLE DATA BLOCKS.

AS SHOWN IN FIGURE 2(A) THE ORDERING MEANS IN THE PREFERRED EMBODIMENT INCLUDES TIME ENCODER 114.

TIME ENCODER 114 PLACES THE BLOCKS OF CONVERTED FORMATTED INFORMATION FROM CONVERTER 113 INTO A GROUP OF ADDRESSABLE DATA BLOCKS. THE PREFERRED ADDRESSING SCHEME EMPLOYS TIME ENCODING.

SO WE KNOW FROM THIS PASSAGE THAT THE ADDRESSING SCHEME FOR, FOR SEQUENCE OF ADDRESSABLE DATA BLOCKS IS TIME ENCODING, AND THAT'S PERFORMED BY THE TIME ENCODER 114.

NOW, IN THE BRIEF OF THE ROUND THREE DEFENDANTS FROM AUGUST 11, 2006, THEY, TOO, AGREE THAT THE TERM "ADDRESSABLE" IN THE PHRASE "SEQUENCE OF ADDRESSABLE DATA BLOCKS" MEANS TIME ENCODING.

AND THEY SAID THAT, THAT IN SUM, TIME ENCODING RELATES ONLY TO THE ADDRESSING PORTION OF THE PHRASE SEQUENCE OF ADDRESSABLE DATA BLOCKS. IT MAKES ALL OF THE DATA BLOCKS, WHICH WERE ALREADY PLACED INTO A SEQUENCE BEFORE TIME ENCODING, ADDRESSABLE.

THAT IS THE REASON THAT THE PATENT DESCRIBES TIME ENCODING AS AN ADDRESSING SCHEME AND

EXPLAINS THAT TIME ENCODING MAKES ITEMS AND SUBSETS OF ITEMS ADDRESSABLE.

NOW, THE COURT MAY RECALL WE HAD MR. WEISS HERE TO TESTIFY A FEW MARKMAN HEARINGS AGO AND, AND HE WAS ASKED WHETHER THERE WERE ANY ADDRESSING SCHEMES OTHER THAN TIME ENCODING DISCLOSED IN THE PATENT SPECIFICATION AND HE SAID THAT THERE WEREN'T. INDEED THIS FACT IS NOT DISPUTED.

NOW, LOOKING INTO THE PATENT SOME MORE TO LEARN WHAT, WHAT FUNCTIONS TIME ENCODING PERFORMS, WE LEARN THAT TIME ENCODING ACHIEVES A NUMBER OF ADDRESSABILITY FUNCTIONS.

FIRST OF ALL, AT COLUMN 8, LINE 2 TO 6, THE PATENTEE SAID THAT THE PREFERRED -- THAT TIME ENCODING ALLOWS REALIGNMENT OF AUDIO AND VIDEO INFORMATION IN THE COMPRESSED DATA FORMATTING SECTION AFTER SEPARATE AUDIO AND VIDEO COMPRESSION PROCESSING BY PRECOMPRESSION PROCESSOR AND COMPRESSOR.

WHAT THAT MEANS IS SO WHEN PLAY BACK OCCURS AT THE USER SIDE, THE VOICE, THE WORDS ARE SYNCED WITH THE LIPS IN THE PICTURE AND THAT'S THE REALIGNMENT THAT NEEDS TO OCCUR AND IT'S IMPORTANT BECAUSE, BECAUSE FOR LIP SYNCING AND OTHER ISSUES.

AGAIN, AT COLUMN 8, LINE 20 TO 23 THE PATENTEE HAS DESCRIBED ADDITIONAL FUNCTIONS THAT TIME ENCODING PROVIDE. THEY DESCRIBE REALIGNMENT OF AUDIO AND VIDEO DATA. THEY HAVE ADDED SOME ADDITIONAL FUNCTIONS, SYSTEM ADDRESSING OF PARTICULAR DATA BITES AND USER ADDRESSING OF PARTICULAR PORTIONS OF ITEMS. AND THESE ARE ALL MADE POSSIBLE THROUGH TIME ENCODING. SO IT'S ANOTHER FUNCTION THAT TIME ENCODING PROVIDES. IT'S IMPORTANT TO THE INVENTION AND IT'S DESCRIBED RIGHT HERE BY THE PATENTEES.

COLUMN 8, LINE 50 TO 52. THE PATENTEE SAID THAT TIME ENCODING BY TIME ENCODER 114 MAKES ITEMS AND SUBSETS OF ITEMS RETRIEVABLE AND ADDRESSABLE THROUGHOUT THE TRANSMISSION SYSTEM 100.

AND AT COLUMN 8, LINE 53 TO 55 THEY GIVE IT ANOTHER IMPORTANT FUNCTION. IT ENABLES SUBSEQUENT COMPRESSION OF THE INFORMATION TO BE IMPROVED BECAUSE DATA REDUCTION PROCESSES MAY BE PERFORMED IN THE TIME DIMENSION.

AND THESE AREN'T THE ONLY FUNCTIONS THAT ONE COULD GLEAN FROM THE, FROM THE PATENT ITSELF AS TO THE, AS TO FOR TIME ENCODING.

THE ROUND THREE DEFENDANTS IN THEIR AUGUST 11TH BRIEF IDENTIFY YET ANOTHER REASON WHICH

IS THAT FOLLOWING COMPRESSION, THE ORDER OF THE DATA BLOCKS MAY BE CHANGED. AND THEY SAID THAT THE TIME CODES ALLOW THE COMPRESSED FORMATTED SECTION TO RESTORE THE ORDER BEFORE THE COMPRESSED INFORMATION IS STORED.

IN OTHER WORDS, IF THE DATA BLOCKS ARE IN THE TIME CONSEQUENCE OR GOING INTO THE COMPRESSOR BUT COME OUT IN A DIFFERENT ORDER SO THAT THE FRAME AT TWO SECONDS COMES BEFORE THE FRAME AT ONE SECOND, THE FACT THAT WE HAVE TIME CODES ALLOWS, ALLOWS THE ORDER TO BE RESTORED SO THAT THE TWO SECOND FRAME COMES AFTER THE ONE SECOND FRAME.

THE COURT: I GUESS THE ISSUE FOR ME HAS ALWAYS BEEN WHETHER, WHETHER TO, TO READ OUT PREFERRED EMBODIMENT AND, AND SAY, SAY THAT THE ONLY EMBODIMENT. YOU SAY THAT THE EXPERT HERE TELLS ME THAT, THAT THAT'S THE ONLY EMBODIMENT.

MR. BLOCK: THAT'S WHAT HE SAID.

THE COURT: BUT THAT'S NOT WHAT THE PATENTEE SAID.

THE INVENTOR SAID THE PREFERRED ADDRESSING SCHEME IS TIME ENCODING, AND SO IT SEEMS TO ME THAT, THAT THAT MUST MEAN THAT THERE ARE OTHER SCHEMES BUT THAT THIS IS THE PREFERRED AMONG THEM.

MR. BLOCK: NO, THAT DOESN'T NECESSARILY MEAN THAT. PREFERRED -- WELL, FIRST OF ALL, HE DOESN'T GIVE ANY -- EVEN THOUGH HE USES THE WORD "PREFERRED," HE DISCLOSES NO OTHER ADDRESSING.

THE COURT: I AGREE WITH THAT.

MR. BLOCK: IT'S NOT THERE.

THE COURT: BUT WHAT SHOULD I DO WITH THAT? IN OTHER WORDS, YOU WOULD HAVE ME SAY THAT ALTHOUGH, ALTHOUGH THIS IS CALLED PREFERRED, IT REALLY IS THE ONLY ONE?

MR. BLOCK: CORRECT.

THE COURT: WHY?

MR. BLOCK: TWO REASONS. THE WANG OF THE FEDERAL CIRCUIT CASE TELLS US THAT JUST BECAUSE THE WORD "PREFERRED" APPEARS IN THE PATENT. THAT DOESN'T MEAN THAT THAT INDICATED THAT THERE MIGHT BE SOME OTHER UNDISCLOSED VERSION.

AND SECOND, THAT THE WORD "PREFERRED" HAS A DIFFERENT MEANING IN PATENT LAW; THAT AN INVENTOR USES THE WORD "PREFER" TO CONNOTE THE BEST MODE AND SO EVEN IF THEY HAVE THE WORD JUST ONE MODE, THEY MAY USE THE WORD TO INDICATE TO THE READER HERE I AM DISCLOSING MY BEST MODE IN COMPLIANCE WITH SECTION 112.

THE COURT: BUT EVEN THAT DOESN'T SAY

THAT IT'S MY ONLY MODE. IT'S THE BEST.

MR. BLOCK: IT'S THE BEST MODE, BUT IT IS THE ONLY MODE BECAUSE IT'S ALL HE HAS DISCLOSED.

THE COURT: AM I, IN MY DEFINITION, HAVE I PRECLUDED TIME ENCODING?

MR. BLOCK: WELL, THE PROBLEM WITH THE DEFINITION IS THAT THERE'S NO WAY TO DETERMINE THE DEFINITION REQUIRES THAT, THAT THERE'S -- THERE BE AN ORDER TO THE DATA BLOCKS AND IT REQUIRES THAT POSITIONS RELATIVE TO, TO THE BEGINNING OF THE FILE BE KNOWN. BUT THE CONSTRUCTION DOESN'T TELL ANYONE HOW TO DO THAT.

THE COURT: BUT IS THAT NECESSARY? IN OTHER WORDS, IF I SAY THAT YOU HAVE TO KNOW THE BEGINNING AND THEY PREFER TO DO IT BY TIME, AND SOMEONE ELSE PREFERS TO DO IT BY SOUND OR COLOR OR SOME OTHER EVENT, WOULDN'T THAT BE AN ORDERING MEANS?

MR. BLOCK: NOT IN ACCORDANCE WITH THE PATENT BECAUSE THE PATENT TELLS ME THAT IT HAS TO BE TIME ENCODING AND THE PATENT TELLS ME ALL OF THE FUNCTIONS.

THE COURT: WELL, IT HAS TO BE. THAT'S WHAT I'M WORRIED ABOUT.

MR. BLOCK: BUT THE FUNCTIONS THAT, THAT

TIME ENCODING PROVIDE WHICH ARE TAUGHT BY THE PATENTEES UNDER YOUR EXAMPLE OF SOUND OR COLOR, HOW WOULD THEY, HOW WOULD THEY WORK? HOW WOULD --

THE COURT: I AGREE WITH YOU, AND I'M NOT PREPARED TO ACT AS AN INVENTOR HERE AND COME UP WITH THAT BUT, BUT WHAT I'M TRYING TO BE CAREFUL ABOUT IS NOT TO READ INTO, INTO THE CLAIM AN EMBODIMENT UNLESS THE INVENTOR INTENDS THAT EMBODIMENT TO, TO BE SYNONYMOUS WITH THE CLAIM AND, AND WHAT I'M BEING THROWN OFF BY IS THE WORD "PREFERRED" METHOD. AND I AGREE THAT THERE'S A DESCRIPTION OF THAT METHOD AND HOW WELL IT WORKS, AND I CAN UNDERSTAND WHY IT WOULD BE PREFERRED.

SO, SO UNLESS YOU TELL ME MY DEFINITION WON'T INCORPORATE THAT PREFERRED METHOD, AND, AND WHAT YOU'RE SAYING IS THAT, MY, MY DEFINITION IMPERMISSIBLY ALLOWS OTHER ORDERING METHODS.

MR. BLOCK: THAT'S ONE.

THE COURT: SO WHAT YOU WANT ME TO SAY IS THAT THE ORDERING MEANS IS ONLY TIME ENCODING?

MR. BLOCK: CORRECT.

THE COURT: THAT THE INVENTOR ONLY MEANT IT AS TIME ENCODING ORDERING MEANS?

MR. BLOCK: CORRECT.

THE COURT: AND THE ONLY PLACE THAT YOU

REJECT WHAT YOUR COLLEAGUE WAS ARGUING?

MR. BLOCK: BECAUSE HE WANTS TO LIMIT ADDRESS TO THE ONE STARTING LOCATION FOR THE FILE THAT IT IS GOING TO HAVE WHEN IT REACHES THE COMPRESSED DATA LIBRARY, AND WHAT I'M SAYING IS THAT THERE ARE MORE ADDRESSES OR ADDRESSABILITY FUNCTIONS THAT TIME ENCODING OR SEQUENCE OF ADDRESSABLE DATA BLOCKS PROVIDE INCLUDING REALIGNMENT OF THE AUDIO, THAT'S AN ADDRESSING FUNCTION, SYSTEM ADDRESSING, USER ADDRESSING BECAUSE REMEMBER THE USER IS GOING TO GET THE FILE EVENTUALLY AND THEY'RE GOING TO WANT TO WATCH IT AND THEY'RE GOING TO WANT TO SEE THE LIPS MOVE WHEN THE SOUND COMES OUT AND THEN THE STATEMENT BROADLY SAYS IT MAKES ITEMS AND SUBSETS OF ITEMS RETRIEVABLE AND ADDRESSABLE THROUGHOUT THE TRANSMISSION SYSTEM.

AND, AND I THINK THIS IS WHERE YOUR HONOR WAS GOING BEFORE, BEFORE WITH MR. BENYACAR THAT ADDRESSABILITY IS NOT JUST, JUST FINDING IT IN THE COMPRESSED DATA LIBRARY BUT THERE'S MORE TO IT. IT CAN BE -- THINGS CAN BE DONE WITH IT THROUGHOUT THE SYSTEM.

AND, IN FACT, THIS REALIGNMENT FUNCTIONALITY, THIS ADDRESSABILITY THROUGH

REALIGNMENT, THAT OCCURS BEFORE THE FILE IS EVER CREATED. THAT'S PART OF THE LIFE OF THE DATA BLOCK.

WHEN IT COMES OUT OF THE COMPRESSOR, THE SPEC SAYS THAT, THAT TIME ENCODING ALLOWS REALIGNMENT OF THE AUDIO AND VIDEO INFORMATION IN THE COMPRESSED DATA FORMATTING SECTION 117, AFTER, AFTER SEPARATE AUDIO AND VIDEO COMPRESSION PROCESSING BY PRECOMPRESSION PROCESSOR 115 AND COMPRESSOR 116.

SO IF WE LOOK AT FIGURE 2(A). WHAT THEY'RE REFERRING TO IN FIGURE 2(A), 117 IS, IS REFERENCED TO THE COMPRESSED DATA FORMATTING SECTION WHERE THE DATA SEPARATELY, THAT'S AUDIO, HAS BEEN COMPRESSED, SEPARATELY, THAT'S VIDEO, THEY'RE BROUGHT TOGETHER. YOU SEE THE TWO ARROWS BRINGING THEM TOGETHER AND THAT'S WHERE THE FILE IS CREATED AND THAT'S WHERE THE REALIGNMENT OCCURS.

NOTHING IS STORED AT THAT POINT. THE STORAGE HAPPENS OR FIGURE 2(B) WHERE THE COMPRESSED DATA LIBRARY IS.

THIS ISN'T THE ONLY REALIGNMENT. REMEMBER THAT WHEN THE USER RECEIVES IT THAT REALIGNMENT HAS TO BE CORRECT SO THAT WHEN THEY VIEW IT, THEY SEE THE LIPS MOVING AND THE SOUNDS

THEY WANT TO HEAR.

THE COURT: PART OF THIS IS, IS THE CONCERN THAT YOUR ARGUMENT IS NOT CLASHING, IN OTHER WORDS, IT SOUNDS LIKE YOUR FIRST ARGUMENT HAD TO DO WITH TIME ENCODING AND, AND I HEARD A DIFFERENT ARGUMENT FROM THE OTHER SIDE HAVING TO DO WITH THIS UNIQUE DATA BLOCK ORDERING AND THEN NOW I'M HEARING AN ARGUMENT THAT IS RESPONSIVE TO THAT BUT IT MAKES ME WONDER WHETHER OR NOT WHAT I'M HEARING FROM YOU NOW MEANS THAT, THAT THERE IS MORE TO, MORE TO ORDERING THINGS INTO ADDRESSABLE DATA BLOCKS THAN SIMPLY TIME ENCODING WHICH UNDERCUTS YOUR FIRST ARGUMENT.

MR. BLOCK: NO.

THE COURT: IN OTHER WORDS, I HAVE TO PUT THINGS TOGETHER AT VARIOUS POINTS FOR VARIOUS REASONS IN THE SYSTEM. TIME MAY BE A WAY TO DO THAT BUT THERE COULD BE OTHER THINGS THAT MAKE THAT HAPPEN AS WELL AS TIME.

MR. BLOCK: OKAY. NOTHING IS DISCLOSED THAT IS NOT TIME. ONLY TIME IS DISCLOSED. AND, IN FACT, COULD YOU PUT UP FIGURE 8 FOR ME, PLEASE.

THE COURT NEEDS TO KEEP IN MIND THAT, THAT, THAT AUDIO AND, AND THIS PROBLEM OF REALIGNMENT, THERE'S, THERE'S NOT ONE FRAME OF

VIDEO FOR EVERY ONE FRAME OF AUDIO. SO IT'S NOT A ONE-TO-ONE RELATIONSHIP. THIS FIGURE 8(A) SHOWS THE FRAMES OR THE DATA BLOCKS OF THE VIDEO FOR ONCE, FOR ONCE --

THE COURT: DOES COLUMN 6, LINE 39, LINE 48 SPEAK TO, SPEAK TO PROCESSES FOR, FOR PLACING DATA INTO ORDERED DATA BLOCKS?

MR. BLOCK: NO.

THE COURT: ALL RIGHT. SO THERE'S NOTHING ABOUT, ABOUT THIS WHICH HAS TO DO WITH ADDRESSABILITY?

MR. BLOCK: NO. WELL, IT HAS TO DO WITH FILE ADDRESSABILITY. IT DOESN'T HAVE TO DO WITH DATA BLOCK ADDRESSABILITY. DATA BLOCK ADDRESSABILITY HAS TO DO WITH TIME CODES. MY FILE CAN HAVE AN ADDRESS BUT THAT DOESN'T MEAN TO FIND THE DATA BLOCKS AND I NEED SOMETHING ELSE AND THAT'S WHAT THE TIME CODES DO.

THE COURT: ALL RIGHT. AND SO THE REASON THAT I'M HAVING A DISCONNECT IS THAT YOU WERE ARGUING ABOUT DATA BLOCKS AND YOUR OPPONENT TOOK ME OFF INTO A DIFFERENT PLACE HAVING TO DO WITH ADDRESSABILITY. AND YOUR --

MR. BLOCK: YES.

THE COURT: -- AND YOUR ARGUMENT ON

ADDRESSABILITY IS UNCONNECTED WITH TIME.

MR. BLOCK: NO. MY ARGUMENT IS COMPLETELY CONNECTED TO TIME.

THE COURT: BUT WHEN IT COMES TO THIS LEVEL, TIME IS NOT IMPORTANT?

MR. BLOCK: WHEN IT IS THE LEVEL OF THE FILE ADDRESS TIME IS UNIMPORTANT. BUT IF I WANT TO FILE A DATA BLOCK, TIME IS IMPORTANT.

THE COURT: ALL RIGHT. SO IF I AM NOW IN THE RANGE OF COLUMN 6, LINE 29, AND I WANT TO LOOK FOR POPULARITY CODES OR I WANT TO LOOK FOR PROGRAM NOTES, TIME IS NOT IMPORTANT.

MR. BLOCK: TIME IS NOT IMPORTANT.

THE COURT: BUT ADDRESSABILITY IS.

MR. BLOCK: OF THE DATA BLOCKS. TIME ENCODING IS, IS DESCRIBED IN THE PATENT AS, AS BEING RELEVANT ONLY, ONLY TO DATA BLOCKS.

THE COURT: RIGHT. AND NONE OF THIS IS RELEVANT TO DATA BLOCKS?

MR. BLOCK: CORRECT.

THE COURT: SO IF I WANT TO KNOW WHAT A POPULARITY CODE IS, I DON'T FIND THAT BY DATA BLOCKS.

MR. BLOCK: NO.

THE COURT: HOW DO I KNOW THAT?

THIS. I UNDERSTAND BOTH, BOTH POSITIONS WITH RESPECT TO THIS. THIS IS NOT, THIS IS NOT A NEW ARGUMENT.

AND AS I SAID, I AM IMPRESSED THAT THE POSITION OF ACACIA HAS CHANGED WITH RESPECT TO THIS ONLY BECAUSE IT'S INTERESTING TO NOTE IT BUT THIS IS THE CLAIM CONSTRUCTION PROCESS AND SINCE I HAVE MYSELF HAVE ENJOYED THE PRIVILEGE OF CHANGING, I CAN'T DENY IT TO THOSE OF YOU WHO WOULD WISH TO CHANGE YOUR ARGUMENT BASED UPON THIS PROCESS AS WELL.

SO I'M, I WON'T HOLD -- IT'S NOT ESTOPPEL OR BUT IT'S, IT'S, IT'S -- I APPRECIATE YOUR POINTING IT OUT.

MR. BENYACAR: THANK YOU, YOUR HONOR.

MR. DORMAN: YOUR HONOR, I'M GOING TO PROVIDE YOU A COUPLE OF REFERENCES WHICH ARE ILLUMINATING.

FIRST OF ALL --

THE COURT: CAN I SEE WHAT MY COURT REPORTER WANTS. ALL RIGHT. I THINK WE'RE COMING CLOSE TO AN END.

MR. DORMAN: I HAVE JUST A MINUTE, BUT I WANT TO GIVE YOU SOME REFERENCES TO LEAVE YOU WITH AS TO WHY IN THE CASE OF THE FIRST STORING ELEMENT

IS IN 41 WE'RE TALKING ABOUT MAINTAINING AND NOT MAINTAINING AND NOT PLACING.

FIRST OF ALL, IT'S IN NO WAY REMARKABLE WHERE YOU HAVE A WORD THAT HAS TWO COMMON MEANINGS TO HAVE THE SAME WORD USED IN DIFFERENT WAYS IN A CLAIM THAT HAS HAPPENED MANY TIMES AND THAT JUST HAPPENS HERE.

THE PRACTICAL -- THERE'S -- MS. KREVANS INDICATED THAT THERE'S NO SUPPORT IN THE, IN THE, IN THE, IN THE SPECIFICATION FOR OUR CONTENTION THAT THE FIRST STORING LIMITATION REFERS TO MAINTAINING AND NOT TO PLACING, AND I DISAGREE WITH THAT. AND THERE ARE THREE SPECIFIC ONES AND LET ME GIVE THEM TO YOU.

FIRST, ON LINE 18, RATHER COLUMN 18, LINE 53, IT SAYS, "AS ILLUSTRATED IN FIGURE 7, THE FIRST STEP 6 THE DISTRIBUTION METHOD 400 INVOLVES RETRIEVING THE INFORMATION FOR SELECTED ITEMS IN THE SOURCE MATERIAL LIBRARY."

SO THEY'RE TALKING ABOUT THE FIRST STEP, IT IS THE FIRST STEP OF RETRIEVING. IN ORDER TO RETRIEVE YOU HAVE TO, YOU HAVE TO HAVE SOMETHING TO RETRIEVE FROM.

NOW, WHAT MR. BENYACAR DID IN HIS LAST PICTURE WAS HE CROSSED OUT THE WORD "THE" IN THE

RETRIEVING SECTION AND TALKED ABOUT AND, AND THAT FOR A MATTER OF, OF PATENT CLAIM DRAFTING, THAT WORD, THAT WORD WAS THE RETRIEVING THE INFORMATION IN THE ITEMS FROM THE SOURCE MATERIAL LIBRARY BOTH ITEMS AND SOURCE MATERIAL LIBRARY HAD TO HAVE ANTECEDENT SUBJECTS FOR THAT AND THAT WAS SIMPLY CREATED IN, IN THE, IN THE FIRST STORING ITEMS SO THAT THEY'RE THERE TO BE RETRIEVED. SO IT'S BASICALLY DEFINITIONAL.

SO WE'RE TALKING ABOUT DISTRIBUTION METHOD.

IF WE GO TO FIGURE 7, AND IF WE GO TO FIGURE 7 IN THE PATENT, WHICH IS BESIDE FIGURE 5, IT STARTS "RETRIEVE" AT THE VERY TOP. THE FIRST ONE IS RETRIEVING. SO THERE'S NO DISCUSSION ABOUT HOW, HOW INFORMATION GETS PLACED INTO A SOURCE MATERIAL LIBRARY.

IF WE GO TO FIGURE 2(A) THAT TALKS ABOUT, ABOUT THE TRANSMISSION SYSTEM, LOOK AT THE FAR LEFT SIDE OF THAT. THERE'S NO ARROW GOING INTO SOURCE MATERIAL LIBRARY. SOURCE MATERIAL LIBRARY IS WHERE THINGS START FROM. THIS TRANSMISSION SYSTEM SPEAKS OF, OF ONLY THINGS BEING MAINTAINED THERE THAT ARE RETRIEVED FROM IT. THERE'S NO ARROW GOING IN THERE.

AND INDEED IF WE GO TO COLUMN 5, TO THE PARAGRAPH AT THE BOTTOM OF COLUMN 5 WHERE WE'RE TALKING ABOUT THE SOURCE MATERIAL LIBRARY IT SAYS FIGURES 2(A) AND 2(B) ILLUSTRATE -- AM I IN THE WRONG PLACE?

MR. BLOCK: THE LAST PART.

MR. DORMAN: THIS IS THE BOTTOM OF 5, '992, THE TRANSMISSION SYSTEM 100 OF A PREFERRED EMBODIMENT OF THE PRESENT INVENTION PREFERABLY INCLUDES SOURCE MATERIAL LIBRARY MEANS FOR TEMPORARY STORAGE OF ITEMS PRIOR TO CONVERSION.

SO THIS IS A DESCRIPTION OF THE TRANSMISSION SYSTEM THAT IS, THAT IS -- ALL THAT IS BEING DISCLOSED ISN'T THAT, AS HOW THINGS ARE BEING STORED OR PUT IN. IT'S JUST THAT THEY'RE THERE. THEY'RE AVAILABLE. THEY'RE HOLDING THEM.

SO THOSE, THOSE ARE, I THINK, THE DIRECT REFERENCES.

AND THE COLUMN 7 REFERENCE THAT MS. KREVANS READ TO YOU HAD NOTHING TO DO WITH PUTTING INFORMATION IN THE SOURCE MATERIAL LIBRARY -- THAT HAD TO DO WITH -- REMIND ME WHAT THAT HAD TO DO WITH -- INTERTRANSFER FROM THE I.D. ENCODER.

SO I DO THINK THERE IS SPECIFIC IN THE

SUPPORT OF THE SPEC THAT, YOU KNOW, YOU'RE MAINTAINING FOR IT TO BE RETRIEVED. THERE'S NO SUPPORT FOR THE PLACING WITH RESPECT TO THAT PARTICULAR ELEMENT.

THANK YOU, YOUR HONOR.

THE COURT: ARE YOU HURT AT ALL IN YOUR ARGUMENT IF I GO BACK TO AN EARLIER REQUEST THAT YOU -- THAT I DEFINE IT AS PUTTING IT IN THERE AND, AND ONCE IT'S IN THERE, IT IS, IT IS KEPT THERE FOR, FOR PURPOSES OF THE NEXT STEP?

MR. DORMAN: I THINK, YOUR HONOR, THAT THAT'S, THAT THAT'S REQUIRING AN ADDITIONAL STEP THAT I DON'T THINK THAT, THAT THAT CLAIM REQUIRES. SO I'M HURT BY THAT POTENTIALLY FROM AN INFRINGEMENT PERSPECTIVE.

THE COURT: SO YOUR REQUEST IS THAT I NOT INCLUDE IN MY DEFINITION OF STORING ANY, ANY STEP OF GETTING IT THERE IN THE FIRST PLACE.

MR. DORMAN: I THINK -- FOR THE -- IF WE ARE GOING TO, AGAIN, MY REQUEST IS SIMPLE. MY REQUEST IS IN THE DISJUNCTIVE. EITHER YOU CAN FOR ALL TIMES APPEARS TELL THE JURY THAT IT MEANS PLACING OR MAINTAINING AND FOR THE CONTEXT FOR THEM TO DETERMINE WHICH, OR, OR IN THE FIRST STORING STEP OF, OF CLAIM 41, THAT'S MAINTAINING AND, AND

IN THE SECOND STORING STEP IT IS PLACING BECAUSE THE CONTEXT, I BELIEVE, AND IN SUPPORT OF THE SPEC IS CONSISTENT WITH THAT. THAT'S WHAT I'M REQUESTING.

THE COURT: I UNDERSTAND THAT. BUT IF I, IF I DEFINE IT AS PLACING ONLY OR RETAINING ONLY IT JUST SEEMS TO ME THAT, THAT THE REASON, THE REASON WE ARE IN THIS DEBATE HAS TO DO WITH, WITH NOW EXAMINING THE SYSTEM. WE DON'T HAVE A WAY OF GETTING THE INFORMATION IN, BUT YOU SOUND HAPPY WITH THAT.

IN OTHER WORDS, YOU SEEM SATISFIED THAT YOU HAVE A SYSTEM WHICH TAKES FOR GRANTED THAT THE ITEMS ARE IN THE SOURCE MATERIAL LIBRARY AND ALL THAT IS NECESSARY IS TO MOVE IT THROUGH. AND YOU WANT ME TO RECOGNIZE THAT, THAT THIS IS A PROCESS THAT DOESN'T HAVE, HAVE AS PART OF IT AS PART OF ITS, ITS STRUCTURE OR, OR PART OF ITS METHOD GETTING THEM IN THERE.

MR. DORMAN: OF THE CLAIM YOU AND I HAVE BEEN TALKING ABOUT, YES.

THE COURT: OKAY. ALL RIGHT. I UNDERSTAND.

MR. BLOCK: MOVING ON.

MR. DORMAN: FINALLY.